

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MILES ORLANDO LEE,

Petitioner,

Case No. 2:14-cv-251

v.

Honorable Robert Holmes Bell

DANIEL HEYNS et al.,

Respondents.

_____ /

OPINION

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2241.¹ Promptly after the filing of a petition for habeas corpus, the Court must undertake a preliminary review of the petition to determine whether “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, RULES GOVERNING § 2254 CASES; *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. Rule 4; *see Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (district court has the duty to “screen out” petitions that lack merit on their face). A dismissal under Rule 4 includes those petitions which raise legally frivolous claims, as well as those containing factual allegations that are palpably incredible or false. *Carson v. Burke*, 178 F.3d 434, 436-37 (6th Cir. 1999). After undertaking the review required by Rule 4, the Court concludes that the petition must be dismissed because his claims are not cognizable in an action under § 2241.

¹The Rules Governing § 2254 Cases also apply to petitions filed under § 2241. *See* Rule 1(b), RULES GOVERNING § 2254 CASES.

Factual Allegations

Petitioner presently is incarcerated at the Baraga Maximum Correctional Facility (AMF). Although he labels his action as one seeking relief under 28 U.S.C. § 2241, the allegations of his complaint concern the conditions of his confinement. Petitioner complains that Respondents Michigan Department of Corrections (MDOC) Director Daniel Heyns and AMF Warden Thomas Mackie violated his First, Eighth and Fourteenth Amendment rights.

Petitioner's application is brief. On December 6, 2014, Petitioner alerted the unit officer that he was experiencing pain in his leg and it was swollen. The unit officer contacted medical staff about the issue but the medical staff mentioned that if it was not bleeding, Petitioner was okay and could return to work.

Petitioner then filed a grievance about being denied medical treatment. The Grievance Coordinator denied Petitioner's first grievance because of an error with the date on the grievance. Petitioner's second grievance was also rejected. Petitioner argues that the Grievance Coordinator wrongly rejected his grievances in violation of MDOC policy.

Petitioner finally complains that AMF staff is retaliating against him by not processing his "inmate requests to Warden Mackie, law library request[s], and [request for] outside medical treatment" for Petitioner's leg. (Pet., docket #1, Page ID#6.)

For relief, Petitioner requests a temporary restraining order.

Discussion

Petitioner filed his application for habeas relief under 28 U.S.C. § 2241. Section 2241 authorizes district courts to issue a writ of habeas corpus to a state or federal prisoner who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

§ 2241(c)(3). Where a prisoner is challenging the very fact or duration of his physical imprisonment and the relief that he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a petition for writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). However, habeas corpus is not available to prisoners who are complaining only of the conditions of their confinement or mistreatment during their legal incarceration. *See Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004); *Lutz v. Hemingway*, 476 F. Supp. 2d 715, 718 (E.D. Mich. 2007). Complaints concerning conditions of confinement “do not relate to the legality of the petitioner’s confinement, nor do they relate to the legal sufficiency of the criminal court proceedings which resulted in the incarceration of the petitioner.” *Lutz*, 476 F. Supp. 2d at 718 (quoting *Maddux v. Rose*, 483 F. Supp. 661, 672 (E.D. Tenn. 1980)). Because Petitioner challenges only the conditions of his confinement, his claims “fall outside of the cognizable core of habeas corpus relief.” *Hodges v. Bell*, 170 F. App’x 389, 393 (6th Cir. 2006). An inmate like Petitioner may, however, bring claims challenging the conditions of his confinement under 42 U.S.C. § 1983.

Although *pro se* litigants are treated to less stringent pleading formalities, courts still require such litigants to meet basic pleading standards. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). “Arguably, hanging the legal hat on the correct peg is such a standard, and ‘[l]iberal construction does not require a court to conjure allegations on a litigant’s behalf.’” *Martin*, 391 F.3d at 714 (quoting *Erwin v. Edwards*, 22 F. App’x 579, 580 (6th Cir. 2001) (dismissing a § 1983 suit brought as a § 2254 petition)). Where, as here, claims about conditions of confinement are not cognizable in an action under § 2241, the district court must dismiss the habeas action without

prejudice to allow the petitioner to raise his potential civil rights claims properly in a § 1983 action. *Martin*, 391 F.3d at 714. Accordingly, the Court will dismiss Petitioner's claims without prejudice.

Conclusion

In light of the foregoing, the Court will summarily dismiss without prejudice Petitioner's application pursuant to Rule 4 because his claims are not cognizable in an action under § 2241.

Certificate of Appealability

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This Court's dismissal of Petitioner's action under Rule 4 of the Rules Governing § 2254 Cases is a determination that the habeas action, on its face, lacks sufficient merit to warrant service. It would be highly unlikely for this Court to grant a certificate, thus indicating to the Sixth Circuit Court of Appeals that an issue merits review, when the Court has already determined that the action is so lacking in merit that service is not warranted. *See Love v. Butler*, 952 F.2d 10 (1st Cir. 1991) (it is "somewhat anomalous" for the court to summarily dismiss under Rule 4 and grant a certificate); *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990) (requiring reversal where court summarily dismissed under Rule 4 but granted certificate); *Dory v. Comm'r of Corr. of New York*, 865 F.2d 44, 46 (2d Cir. 1989) (it was "intrinsically contradictory" to grant a certificate when habeas action does not warrant service under Rule 4); *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983) (issuing certificate would be inconsistent with a summary dismissal).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined each of Petitioner’s claims under the *Slack* standard. Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the Court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Petitioner’s claims. *Id.*

The Court finds that reasonable jurists could not conclude that this Court’s dismissal of Petitioner’s claims was debatable or wrong. Therefore, the Court will deny Petitioner a certificate of appealability.

A Judgment and Order consistent with this Opinion will be entered.

Dated: January 15, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE